IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7278 of 2007
With
SPECIAL CIVIL APPLICATION No. 7279 of 2007
To
SPECIAL CIVIL APPLICATION No. 7284 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 /home/bhatt/sca739607o3.sxwWhether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARIHARBHAI M THAKAR & 6 - Petitioner(s)
Versus
STATE OF GUJARAT NOTICE TOBE SERVED UPON & 4 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioner(s) : 1 - 7.
MS ARCHANA RAVAL, AGP. for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 29/03/2007

ORAL JUDGMENT

1 In light of the view that the Court is inclined to take the petitions are taken up for final hearing. RULE. Ms. Archana Raval, learned Assistant Government Pleader is directed to waive service.

2 The petitioners have preferred these petitions praying for the following reliefs :

> *"7. The petitioners therefore pray :-*
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> *(A)That this Hon'ble Court will be pleased to issue appropriate writ order or direction in the nature of mandamus, prohibition or certiorari or any other appropriate writ, order or direction to quash and set aside the impugned notice at Annexure-A as the same being without authority of law and de hors the provisions of Section 81 of the Act and consequently be pleased to quash and set aside the impugned order at Annexure-E and the order dated 22.8.2006 passed by the Additional Secretary (Appeals), Cooperative Societies, Gujarat State at Annexure-I as well as the impugned communication dated 29.12.2006 at Annexure-L and the communication and notice dated 8.1.2007 by respondent No.5 (Annexure-N and*

Annexure-O);

(B) That this Hon'ble Court will be pleased to issue appropriate writ, order or direction in the nature of mandamus, prohibition or certiorari or any other appropriate writ, order or direction to quash and set aside the impugned orders including impugned notice at Annexure-A;

(C) Pending admission, hearing and final disposal of the petition, an interim direction may kindly be granted staying the implementation, execution and operation of the order at Annexure-I and the communication dated 29.12.2006 (Annexure-L) and be pleased to restrain the respondents, their agents or servants from acting in any manner pursuant to the impugned order of appointment of the Administrator and/or supersession of the Executive Committee of the Society;

(D) That this Honourable Court will be pleased to restrain respondents nos. 4 and 5 from acting or implementing in any manner whatsoever the impugned order of appointment of the Administrator at Annexure-E, Annxure-I or order dated 18.3.2005 and the respondent No.5 may be restrained from acting in any manner pursuant to the communication dated

29.12.2006 and further be pleased to restrain the respondents from preventing the petitioners in their acting as the members of the executive committee of the Sabarmati Cooperative Housing Society Limited till and pending the hearing and final disposal of this petition;

(E) That this Honourable Court will be pleased to order to dispense with the production of certified copies of the notice at Annexure-A, orders at Annexure-E, Annexure-F, Annexure-G, Annexure-H and Annexure-I as the simple copies of the same have been produced from the compilation of Special Civil Application No. 18986 of 2006 and since the said proceedings were carried out by and between and against the Society.

(F) That this Hon'ble Court will be pleased to pass such and further order as the nature and circumstances of the case may require.

3 It is an accepted fact that the show cause notice issued on 9.7.2004/12.7.2004 by the respondent authority is under Section 81 of The Gujarat Cooperative Societies Act, 1961(the Act) seeking explanation as to why the Managing Committee of the Society

should not be superseded and why an Administrator be not appointed.

4 In earlier round of litigation it transpires that the Society was the entity who had challenged the show cause notice. Vide order dated 5.12.2006 the petition moved by the Society was not entertained by this Court in light of the clear provisions of Section 81 of the Act.

5 On going through the impugned notice it is apparent that though various instances of defaults by different members of the Executive Committee have been alleged in the show cause notice the respondent authority has at the end of the notice categorically stated that the Society is called upon to represent its case along with supporting evidence. The notice is admittedly issued to the Chairman/Secretary of the society.

6 When the attention of the learned Assistant Government Pleader was invited to this fact situation it was stated, under instructions, that the practice and procedure adopted by the respondent authority is to obtain a signature from the person on whom the notice is served to the effect that the said person shall inform all other members of the Executive Committee about the proposed action u/s.81 of the Act.

7 In the first instance, regardless of whether such practice and procedure is adopted, it is apparent that in exercise of powers u/s. 81 of the Act, it is the member, viz.,each individual member of the Executive Committee who is to be removed by superseding the committee and appointing an Administrator. The defaults stipulated in clauses (a) & (b) of sub-section(1) of Section 81 of the Act relate to acts of mis-management, negligence etc., and are attributable to the Managing Committee of the Society and not to the Society itself. In the circumstances, merely by serving notice on one of the office bearers of the Society it cannot be stated that the service has been effected qua all the members of the Managing Committee.

8 The nature of defaults is such that a particular default may be attributable to only one or other member and not necessarily all the members. Once the provisions stipulate removal of the member concerned it is necessary and incumbent on the respondent authority to issue individual notice to each member of the Managing Committee and a common notice served on one of the office bearers cannot satisfy the requirement in law of effecting service of individual notice. The reason is not far to seek. Every individual member may have a different and independent

explanation qua the default alleged and there cannot be any common notice. The consequence is removal of the member concerned and in the circumstances, each one of the member is required to be issued an independent notice, independent of each other and independent of the Society.

9 The impugned notice does not comply with the requirements stipulated by the statute and hence is quashed and set aside leaving it open to the authority to initiate fresh action in accordance with law if the circumstances so warrant. As a consequence all the consequential actions shall be treated as invalid and any orders made pursuant to the impugned notices shall not remain in operation.

10 The petitions are allowed accordingly in the aforesaid terms. Rule made absolute. Registry to place copy of this judgment in all connected matters.

Sd/-
(D.A. Mehta, J)

m.m.bhatt